

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Wayne R. Andersen	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	2 C 8913	DATE	9/2/2003
CASE TITLE	Computer Strategy Coordinators, Inc vs. Philadelphia Indemnity Insurance Co		


[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter MEMORANDUM, OPINION AND ORDER: For the foregoing reasons, we enter this clarification [21-1] of our 6/5/2003 order. Philadelphia Indemnity's motion to clarify is granted in part and denied in part. Philadelphia Indemnity's answer to the complaint is due on or before 7/21/2003.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	U.S. DISTRICT COURT CLERK 03 SEP - 3 AM 8:28 FILED IN 000-2-103714 Date/time received in central Clerk's Office	number of notices	Document Number 27
<input type="checkbox"/>	No notices required.			
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<input checked="" type="checkbox"/>	Docketing to mail notices.		SEP 08 2003 docketing deputy initials	
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Defendant.

MEMORANDUM OPINION AND ORDER

I. Choice of Law

“A federal court sitting in diversity looks to the conflict of rules in the state jurisdiction in which it sits in order to choose the substantive law applicable to the case.” *Massachusetts Bay Ins. Co. v. Vic Koeing Leasing, Inc.* 136 F.3d 1116, 1122 (7th Cir. 1998). Here, that forum is Illinois, and Illinois applies the “most significant contracts” analysis in determining which forum’s law governs the interpretation of a comprehensive

21

insurance policy. *Id.*, citing *Society of Mount Carmel v. National Ben Franklin Ins. Co. of Ill.*, 643 N.E. 2d 1280, 1286 (1994). Under Illinois' "most significant contacts" test:

"Insurance contract provisions may be governed by the location of the subject matter, the place of delivery of the contract, the domicile of the insured or of the insurer, the place of the last act to give rise to a valid contract, the place of performance, or other place bearing a relationship to the general contract. While all of these factors must be considered in the choice of law analysis, the location of the insured risk is given special emphasis The location of the insured risk will be given greater weight than any other single contract in determining the state of the applicable law provided that the risk can be located, at least principally in a single state.

Massachusetts Bay, 643 N.E. 2d at 1122, citing *Society of Mount Carmel*, 643 N.E.2d at 1287.

In the instant case, the insured risk is CSC's business, which is located in Illinois. Moreover, CSC, the insured, is domiciled in Illinois, and the delivery of the insurance contract occurred in Illinois when CSC received the counter-signed policy from Philadelphia Indemnity. Therefore, we find that the proper choice of law is Illinois law because the insured risk is the single most important factor, and other factors also favor Illinois.

II. Punitive Damages

Philadelphia Indemnity next argues that punitive damages should not be allowed in this case. In Count II, CSC alleges that Philadelphia Indemnity breached the insurance policy issued to CSC by failing to act in good faith. CSC requests relief in the form of punitive damages. Philadelphia Indemnity argues that punitive damages are not allowed in this instance by Illinois law.

In *Cramer v. Insurance Exchange Agency*, 174 Ill.2d 513, 675 N.E.2d 897 (1996), the Illinois Supreme Court held that an independent action in tort for breach of an


implied covenant of good faith and fair dealing would be proper only in the narrow context of cases involving an insurer's obligation to settle with a third party *who has sued the policyholder*. *Cramer*, 174 Ill.2d at 525, 675 N.E.2d at 897 (emphasis added).

In this case, we find that CSC is not entitled to punitive damages under the facts as alleged in the complaint. CSC has not alleged any tort claim against Philadelphia Indemnity, but instead alleges an action for breach of contract. Moreover, the third party involved in this case, AOL, has not yet sued CSC. Therefore, under the rationale of *Cramer*, an action for tort is not proper because this case does not involve an insurer's obligation to settle with a third party who has sued the policyholder. CSC has an explicit contractual remedy and can sue under the policy.

For these reasons, the request for punitive damages contained in Count II is stricken.

CONCLUSION

For the foregoing reasons, we enter this clarification of our June 5, 2003 order. Philadelphia Indemnity's motion to clarify is granted in part and denied in part. Philadelphia Indemnity's answer to the complaint is due on or before July 21, 2003.


Wayne R. Andersen
United States District Judge

Dated: September 2, 2003